

GERSCHEFSKE et al. -- 10/743,255
Client/Matter: 060012-0307440

REMARKS

Entrance and consideration of this Amendment is respectfully requested. With entrance of this Amendment, claims 30, 34, and 36-39 are pending with claims 1-29, 31-33, and 35 being canceled and claim 39 being newly added. Reconsideration of the outstanding Office Action is respectfully requested.

Claim Rejection – 35 USC 102

In paragraph 3 of the Office Action, claims 30 and 33-36 are rejected as being anticipated by McBride '905. This rejection is respectfully traversed.

With respect to claim 30, it has been amended to recite the method of using the recited exerciser, including:

a user selectively extending one of the upper and lower user interconnecting structures while the user is positioned on the bench assembly when the bench assembly is positioned in the operable position;

removing the bench assembly from the frame assembly; and

the user selectively extending one of the upper and lower user interconnecting structures while the user is standing in the position previously occupied by the bench when the bench assembly was in the operable position.

However, in McBride '905, there is no disclosure or suggestion to remove the support assembly 22. Thus, McBride '905 fails to disclose all of the elements of claim 30. Additionally, neither McBride '905 nor any of the other prior art of record discloses or suggests such a method as claimed.

Since the method of claim 30 recites all of the structural features of claim 30 as previously presented, claim 30 does not present any new matters for consideration.

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Claims 34 and 36 have been rewritten into independent form. Each of these claims is clearly not anticipated by McBride '905. With respect to claim 34, it recites, among other things:

each of said upper and lower user interconnecting structures including a pair of pull lines, and

wherein each of said upper and lower user interconnecting structures includes a pair of hand or foot engaging devices, each of said hand or foot engaging device being configured for receiving a hand or a foot of a user.

Meanwhile, McBride '905 clearly discloses merely a flexible, non-extensible element 158 that is coupled to a hand grip bar 172. Thus, McBride '905 does not disclose an upper interconnecting structure with a pair of pull lines and a pair of engaging devices, as claimed.

With respect to claim 34, it recites, among other things:

said bench assembly being selectively pivoted to said frame assembly at a pivot end of said bench assembly so that said bench assembly may be moved between an operable position wherein the user may utilize said bench assembly for support, and a stored, upright position wherein a free end of said bench assembly that is opposite to said pivot end is adjacent to said upright structure,

wherein said bench assembly has a user supporting surface and a bench assembly support coupled to and extending from said user supporting surface, said bench assembly support being pivotably movable from a retracted position adjacent said user supporting surface and an extended position for supporting said bench assembly above the horizontal surface.

Meanwhile, McBride '905 clearly disclose a support assembly 22 with an elongated support member 174 that is rigidly fixed by "welding" to the outer leg structure 192 (col. 15, lines 29-32, Figs.13 and 14). Thus, even though the support member 174 and the leg structure 192 of McBride '905 may pivot as the support assembly 22 pivots, the leg structure 192 does not pivot. Thus, McBride '905 does not disclose both (1) a bench assembly that is pivoted to the frame, and (2) a bench assembly *support* that extends from the user supporting surface and is pivotably movable from a retracted position to an extended position, as claimed.

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Accordingly, McBride '905 fails to disclose each element of the claims and the outstanding rejection is improper and should be withdrawn.

Further, since none of the prior art of record disclose or suggest an exerciser as set forth in either of claims 34 and 36, they are allowable over the prior art of record.

Claims 37 and 38 depend from and further limit claim 34 and are allowable for the same reasons set forth above with respect to claim 34.

New Dependent Claim 39

New dependent claim 39 has been presented. Since twelve claims have been canceled, the outstanding issues have been simplified, and since new claim 39 depends from claim 30, claim 39 is allowable for the same reasons set forth above with respect to claim 30.

All outstanding matters being addressed and all claims being allowable, the application is deemed to be in allowable form. Entrance of the Amendment and favorable reconsideration is respectfully requested.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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